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Attorneys for Plaintiff United States of America
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA
et al.,

Plaintiffs,

v.

ATLAS ROOFING CORPORATION,

Defendant.

Case No.

CONSENT DECREE

1 CAROL ENGELHARDT (State Bar No. 045105)
2 Senior Deputy District Prosecutor
3 South Coast Air Quality Management District
4 21865 E. Copley Drive
5 P.O. Box 4940
6 Diamond Bar, California 91765-0940
7 Telephone: (909) 396-3450
8 Facsimile: (909) 396-2961
9 E-mail: cengelhardt@aqmd.gov

10 Attorney for South Coast Air Quality Management District

11 FREDERICK J. UFKES (State Bar No. 106889)
12 ERIC J. KOHM (State Bar No. 232314)
13 Kirkpatrick Lockhart Nicholson Graham LLP
14 10100 Santa Monica Boulevard, Seventh Floor
15 Los Angeles, California 90067
16 Telephone: (310) 552-5000
17 Facsimile: (310) 552-5001

18 Attorneys for Atlas Roofing Corporation
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1 WHEREAS, Plaintiff United States of America, on behalf of the United
2 States Environmental Protection Agency ("EPA"), and Plaintiff South Coast Air
3 Quality Management District ("SCAQMD") are concurrently filing a complaint
4 (the "Complaint") initiating this action against Atlas Roofing Corporation
5 ("Atlas");

6 WHEREAS, the United States alleges that Atlas operated its expanded
7 polystyrene ("EPS") foam block manufacturing facility in Los Angeles, California
8 (the "Facility") in violation of the California State Implementation Plan ("SIP"),
9 and that the violations of the SIP are continuing;

10 WHEREAS, the SIP was approved by EPA pursuant to Section 110 of the
11 Clean Air Act (the "Act"), 42 U.S.C. § 7410;

12 WHEREAS, SCAQMD alleges that Atlas operated the Facility in violation
13 of the SCAQMD's rules, and that the violations of these rules are continuing;

14 WHEREAS, Atlas denies the material allegations of the Complaint;

15 WHEREAS, this Consent Decree does not constitute an admission by Atlas
16 of any facts or of any liability;

17 WHEREAS, the United States, SCAQMD, and Atlas (collectively, the
18 "Parties") agree that settlement of the civil claims as alleged in the Complaint is in
19 the public interest and that entry of this Consent Decree without further litigation
20 is the most appropriate way to resolve this action;

21 THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED as
22 follows:

23 I. JURISDICTION AND VENUE

24 1. This Court has jurisdiction over the subject matter of this action and over
25 the Parties pursuant to section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28
26 U.S.C. §§ 1331, 1345, 1355, and 1367. Venue is proper in this Court pursuant to
27 28 U.S.C. §§ 1391(b) and 1395, and 42 U.S.C. § 7413(b). Notice of the violations
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1 set forth in the Complaint was provided to Defendant and the State of California at
2 least thirty days prior to the filing of this Complaint, pursuant to Sections 113(a)
3 and (b) of the Act, 42 U.S.C. §§ 7413(a) and (b). Atlas consents to and shall not
4 challenge entry of this Consent Decree or this Court's jurisdiction to enter,
5 enforce, modify, or terminate this Consent Decree.

6 **II. APPLICABILITY AND BINDING EFFECT**

7 2. Each signatory to this Consent Decree certifies that she or he is fully
8 authorized to enter into the terms and conditions of this Consent Decree and to
9 execute and legally bind the party for whom the signatory has signed.

10 3. The provisions of this Consent Decree shall apply to and be binding
11 upon the United States and SCAQMD, and upon Atlas, its subsidiaries and
12 divisions, and its successors and assigns. Any change in ownership or corporate
13 status of Atlas, including, but not limited to, any transfer of assets or real or
14 personal property, shall in no way alter Atlas's responsibilities under this Consent
15 Decree.

16 **III. CIVIL PENALTY**

17 4. Within thirty (30) days after the entry of this Consent Decree, Atlas shall
18 pay a civil penalty to the United States of two hundred twenty-one thousand, four
19 hundred dollars (\$221,400.00). Payment shall be made by Electronic Funds
20 Transfer ("EFT") to the United States Department of Justice in accordance with
21 the current electronic funds transfer procedures, referencing DOJ Case Number
22 90-5-2-1-08415 and the civil action case name and case number. Payment shall be
23 in accordance with written instructions which will be provided to Atlas by the
24 Financial Litigation Unit of the United States Attorney's Office for the Central
25 District of Los Angeles following entry of this Consent Decree. Atlas shall
26 provide notice of payment, referencing DOJ Case Number 90-5-2-1-08415 and the
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1 civil action case name and case number to EPA and the Department of Justice at
2 the addresses set forth below:

3 Ann Lyons, Esq.
4 Assistant Regional Counsel
5 Office of Regional Counsel
6 United States Environmental Protection Agency - Region IX
7 75 Hawthorne Street
8 San Francisco, CA 94015

9 and

10 Section Chief
11 Environmental Enforcement Section
12 United States Department of Justice
13 P.O. Box 7611
14 Washington, DC 20044-7611

15 5. Within thirty (30) days after the entry of this Consent Decree, Atlas shall
16 pay a civil penalty to SCAQMD of one hundred forty-seven thousand, six hundred
17 dollars (\$147,600.00). Payment shall be made by cashier's or certified check
18 payable to the SCAQMD sent to SCAQMD, 21865 E. Copley Drive, P.O. Box
19 4940, Diamond Bar, CA 91765-0940, and marked "Attention: District
20 Prosecutor/CLE" on the envelope.

21 6. Upon entry of this Consent Decree, the United States and SCAQMD
22 shall be deemed judgment creditors for purposes of collection of the penalties
23 required by this Consent Decree and enforcement of this Consent Decree. In any
24 collection proceeding, the validity, amount, and appropriateness of the civil
25 penalty specified in this Consent Decree shall not be subject to review.

26 **IV. INJUNCTIVE RELIEF**

27 7. Atlas shall cease all expanded polystyrene foam manufacturing
28 operations regulated by SCAQMD Rule 1175 (hereinafter "EPS operations") at
the Facility by no later than midnight, December 31, 2005.

8. Upon ceasing EPS operations, but in no event later than the first business
day following December 31, 2005, Atlas shall surrender all permits to the

1 SCAQMD and shall not file any application for emissions credits. In the event
2 any emissions credits are issued to Atlas, Atlas shall immediately surrender those
3 credits to the SCAQMD.

4 9. Until EPS operations cease, Atlas shall comply with the following
5 operational requirements:

6 (a) The weighted average pentane content of the beads used by Atlas to
7 manufacture EPS blocks shall not exceed 4.52% averaged over a calendar month.

8 (b) Atlas shall only use EPS beads with a pentane content of 5.4% or
9 less.

10 (c) Atlas shall limit the use of EPS beads with a pentane content of 5.0%
11 or greater to 30% of all beads on a monthly basis.

12 (d) Atlas shall continuously operate the catalytic afterburner at the
13 Facility at a temperature of not less than 600 degrees Fahrenheit at the inlet to the
14 catalyst at all times. The temperature shall be continuously recorded and
15 temperature records maintained and provided to EPA and SCAQMD at the
16 addresses provided in Section VIII (Form of Notice) on a weekly basis, no later
17 than Friday of the week following the week for which the temperature was
18 recorded. In the event that the temperature drops below 600 degrees Fahrenheit at
19 any time during EPS operations, Atlas shall notify EPA and SCAQMD of the date
20 and time of the temperature drop within 24 hours of the occurrence of the
21 temperature drop. Atlas shall investigate the cause of the temperature drop and
22 provide a written report setting forth the cause and duration of the drop to EPA
23 and SCAQMD along with the weekly submittal of temperature charts for the week
24 in which the temperature drop occurred.

25 (e) Atlas shall limit the quantity of EPS beads used to manufacture EPS
26 foam at the Facility as follows:

27 (1) For the month of September 2005: no more than 1,850,000
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1 pounds;

2 (2) For the month of October 2005: no more than 1,905,000

3 pounds;

4 (3) For the month of November 2005: no more than 1,550,000

5 pounds;

6 (4) For the month of December 2005: no more than 1,500,000

7 pounds.

8 (f) Atlas shall maintain records and provide copies to EPA and
9 SCAQMD if requested to do so. The records shall include the following
10 information:

11 (1) The proportion of production for each type of EPS bead based
12 on percentage of pentane content;

13 (2) The quantity of beads based on percentage of pentane content
14 delivered on each delivery date and used on each usage date;

15 (3) The product density of the foam produced from each bead
16 based on percentage of pentane content and the quantity used to produce the
17 product;

18 (4) The date and amount of product produced from each type of
19 bead based on percentage of pentane content;

20 (5) The calculated weighted average pentane content per month;

21 (6) Records required by SCAQMD Rule 1175(e);

22 (7) Records of pre-expansion and molding operation for each day
23 of operation. These records shall identify the amount of raw beads used, the
24 manufacturer of the raw beads, and the product number of the raw beads. The
25 records shall also include the total weight and the density of the EPS foam
26 manufactured during each molding operation.

27 (g) Atlas shall allow EPA and SCAQMD personnel to enter into the
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1 Facility at any time without prior notice for the purpose of taking samples,
2 conducting tests, observing operations, or reviewing records required to be kept
3 pursuant to this Consent Decree. This provision in no way limits or otherwise
4 affects any right of entry held by EPA or by SCAQMD pursuant to applicable
5 federal, state, or local laws, regulations, or permits.

6 **V. EFFECT OF SETTLEMENT**

7 10. This Consent Decree resolves: (i) the civil claims of the United States
8 and SCAQMD for the violations alleged in the Complaint filed in this action
9 through the date of lodging of this Consent Decree; (ii) the civil claims of the
10 United States and SCAQMD for the violations set forth in the EPA Notice of
11 Violation issued to Falcon Foam, a division of Atlas Roofing, Inc. on March 15,
12 2004 (Docket No. R9-2004-0004) through the date of lodging of this Consent
13 Decree; (iii) the civil claims of the United States and SCAQMD for violations of
14 Rule 1175(c)(2) through the date of lodging of this Consent Decree; (iv) the civil
15 claims of the United States and SCAQMD for violations of Rule 1175(c)(4)(B)
16 through the date of lodging of this Consent Decree; and (v) the civil claims of
17 SCAQMD for violations of the SCAQMD Hearing Board's Orders through the
18 date of lodging of this Consent Decree.

19 11. The United States, EPA, and SCAQMD retain all authority and reserve
20 all rights to take any and all actions authorized by law to protect human health and
21 the environment.

22 12. Except as provided in Paragraph 10 above, the United States, EPA, and
23 SCAQMD hereby reserve all statutory and regulatory powers, authorities, rights,
24 and remedies, both legal and equitable, civil, criminal, or administrative, including
25 those that may pertain to Atlas's failure to comply with any of the requirements of
26 this Consent Decree.

1 **VI. STIPULATED PENALTIES**

2 13. Atlas shall pay the following stipulated penalties for failure to comply
3 with this Consent Decree:

4 (a) Failure to Make Timely Payments of Civil Penalty. Atlas shall pay a
5 stipulated penalty of \$5,000 per day for failure to timely pay the civil penalties
6 required by Section III (Civil Penalty).

7 (b) Failure to Cease Operations. If Atlas fails to cease EPS operations by
8 midnight of December 31, 2005, as required by Paragraph 7, Atlas shall pay a
9 stipulated penalty of \$100,000 for each day it continues to conduct EPS operations
10 after December 31, 2005.

11 (c) Failure to Comply with Production Limitations. Atlas shall pay a
12 stipulated penalty of \$50,000 per violation for each month in which: (1) the
13 weighted average pentane content of the beads used by Atlas exceeds 4.52% in
14 violation of Paragraph 9(a); (2) Atlas uses beads with a pentane content greater
15 than 5.4% in violation of Paragraph 9(b); (3) Atlas uses greater than 30% on a
16 monthly basis of beads with a pentane content of 5.0% or greater in violation of
17 Paragraph 9(c); and (4) Atlas uses a greater quantity of EPS beads in any month
18 than the limits set forth in Paragraph 9(e).

19 (d) Failure to Provide Information for the Catalytic Oxidizer. Atlas shall
20 pay a stipulated penalty of \$2,000 per day per violation for failure to timely
21 provide any of the information required to be submitted to EPA and SCAQMD
22 pursuant to Paragraph 9(d).

23 (e) Operation of the Catalytic Oxidizer. Atlas shall pay a stipulated
24 penalty of \$15,000 per day if the catalytic afterburner operates at a temperature of
25 less than 600 degrees Fahrenheit at the inlet to the catalyst while the pre-expander
26 is operating for more than four hours during that day.

27 14. Atlas shall notify EPA and SCAQMD in writing of any failure to meet
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1 Consent Decree requirements for which stipulated penalties may be due as soon as
2 it has knowledge of such failure.

3 15. All stipulated penalties shall begin to accrue on the day after the
4 complete performance is due or the day that a violation occurs, and shall continue
5 to accrue through the final day of the completion of the activity or the correction
6 of the noncompliance. Nothing herein shall preclude the simultaneous accrual of
7 separate stipulated penalties for separate violations of this Consent Decree.
8 Penalties shall accrue regardless of whether EPA and/or SCAQMD has notified
9 Atlas of a violation.

10 16. Atlas shall pay half of any stipulated penalties required by this Consent
11 Decree to the United States and half to SCAQMD. Stipulated penalties owed to
12 the United States shall be paid by certified or cashier's check, payable to the "U.S.
13 Department of Justice," and referencing this Consent Decree by caption, civil
14 action number, and DOJ # 90-5-2-1-08415. Atlas must deliver any such payments
15 by certified mail with return receipt requested to:

16 United States Attorney, Central District of California
17 Attention: Financial Litigation Unit
18 300 North Los Angeles Street
Los Angeles, California 90012

19 Stipulated penalties owed to SCAQMD shall be paid by cashier's or certified
20 check payable to the SCAQMD sent to SCAQMD, 21865 E. Copley Drive, P.O.
21 Box 4940, Diamond Bar, CA 91765-0940, and marked "Attention: District
22 Prosecutor/CLE" on the envelope. Concurrently with making any payment for
23 stipulated penalties, Atlas must send notice of payment to EPA, DOJ, and
24 SCAQMD directed to the addresses provided in Section VII (Form of Notice).
25 The notice of payment shall also identify: (a) the specific provision of Section VI
26 (Stipulated Penalties) related to such payment, and (b) a description of the
27 violation(s) of this Consent Decree for which the stipulated penalties or interest
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1 are being tendered.

2 17. Any stipulated penalty accruing pursuant to this Consent Decree shall
3 be payable upon demand and due not later than thirty (30) days from EPA's and/or
4 SCAQMD's written demand.

5 18. If Atlas fails to pay stipulated penalties owed pursuant to this Consent
6 Decree within thirty (30) days of receipt of a written demand, it shall pay interest
7 on the late payment for each day of late payment after the initial thirty-day time
8 period. The rate of interest shall be the most recent interest rate determined
9 pursuant to 28 U.S.C. § 1961.

10 **VII. PAYMENT OF ENFORCEMENT EXPENSES**

11 19. Notwithstanding Section XII (Costs of Suit), Atlas shall pay the United
12 States' and/or SCAQMD's enforcement expenses, including, but not limited to,
13 reasonable attorneys' fees and costs, when the United States and/or SCAQMD
14 incurs such expenses to enforce the terms of this Consent Decree or to collect any
15 unpaid balance of the civil penalty specified in Section III (Civil Penalty) and any
16 unpaid balance of stipulated penalties to be paid in accordance with Section VI
17 (Stipulated Penalties).

18 **VIII. FORM OF NOTICE**

19 20. Unless provided otherwise in this Consent Decree, all written
20 notification, reporting or communication among the Parties required by this
21 Consent Decree shall be addressed as follows:

22 UNITED STATES or DEPARTMENT OF JUSTICE (DOJ)

23 Ann C. Hurley
24 Environmental Enforcement Section
25 U.S. Department of Justice
26 301 Howard Street, Suite 1050
27 San Francisco, CA 94105
28

1 EPA, REGION IX

2 Ann Lyons
3 Assistant Regional Counsel
4 Office of Regional Counsel
5 United States Environmental Protection Agency
6 Region IX
7 75 Hawthorne Street
8 San Francisco, CA 94105

6 Margaret Waldon
7 Office of Air Enforcement
8 75 Hawthorne Street
9 Mail Code: Air-5
10 San Francisco, CA 94105

9 SCAQMD

10 Carol Engelhardt
11 Senior Deputy District Prosecutor
12 South Coast Air Quality Management District
13 21865 E. Copley Drive
14 P.O. Box 4940
15 Diamond Bar, CA 91765-0940

14 ATLAS

15 John Burnam, Esq.
16 P.O. Box 1828
17 Hattiesburg, MS 39403
18 Telephone: 601-583-7300
19 Facsimile: 601-582-0620
20 E-mail: jaburnam@bellsouth.net

19 The United States, EPA, SCAQMD or Atlas may change the address to which
20 notices shall be sent by notifying all parties in writing at the above addresses.

21 21. Unless the United States, EPA, SCAQMD, and Atlas agree to a
22 different form of submission, notification to or communications with the United
23 States, EPA or SCAQMD shall be deemed submitted on the date they are
24 (1) received or (2) sent if sent by overnight express mail.

25 **IX. PUBLIC NOTICE REQUIREMENT**

26 22. This Consent Decree shall be lodged with the Court for a period of not
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1 less than thirty (30) days for public notice and comment in accordance with 28
2 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its
3 consent if the comments regarding the Consent Decree disclose facts or
4 considerations that indicate that the Consent Decree is inappropriate, improper, or
5 inadequate. Atlas consents to the entry of this Consent Decree without further
6 notice.

7 23. If, for any reason, the Court should decline to approve this Consent
8 Decree in the form presented, then this agreement is voidable at the discretion of
9 any Party, and the terms of this Consent Decree may not be used as evidence in
10 any litigation between the Parties.

11 **X. EFFECTIVE DATE, MODIFICATION, AND TERMINATION**

12 24. This Consent Decree will take effect on the date it is entered by the
13 Court.

14 25. Except to change the identity or address of persons receiving
15 notification in accordance with Section VIII (Form of Notice), any modification of
16 this Consent Decree must be in writing and approved by the Parties and the Court
17 before it will be deemed effective.

18 26. This Consent Decree shall terminate when all of the following
19 conditions have been met:

20 a. Atlas has complied with the requirements set forth in Section IV
21 (Injunctive Relief); and

22 b. Atlas has paid the civil penalty as set forth in Section III (Civil
23 Penalty); stipulated penalties, if any, as specified in Section VI (Stipulated
24 Penalties); and the United States' and/or SCAQMD's enforcement expenses, if
25 any, as specified in Section VII (Payment of Enforcement Expenses).

26 27. Atlas shall initiate termination of this Consent Decree by submitting a
27 notification to the United States and SCAQMD that all conditions for termination
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1 pursuant to Paragraph 26 above have been satisfied. If the United States and
2 SCAQMD agree with Atlas's notification, then the Parties shall file a joint motion
3 or stipulation for termination of this Consent Decree.

4 **XI. RETENTION OF JURISDICTION**

5 28. Until the termination of this Consent Decree pursuant to Section X
6 (Effective Date, Modification, and Termination), this Court shall retain
7 jurisdiction over this action and all disputes arising hereunder for the purposes of
8 implementing, interpreting, and enforcing the terms and conditions of this Consent
9 Decree.

10 **XII. COSTS OF SUIT**

11 29. Each Party shall bear its own costs and attorneys' fees incurred in this
12 action through the date upon which this Consent Decree is entered.

13 **XIII. SERVICE**

14 30. Atlas hereby agrees to accept service of process by mail with respect to
15 the Complaint and all matters arising under or relating to this Consent Decree and
16 to waive the formal service requirements set forth in Rule 4 of the Federal Rules of
17 Civil Procedure and any applicable local rules of this Court, including, but not
18 limited to, service of a summons. Atlas shall identify, on the attached signature
19 page, the name and address of an agent who is authorized to accept service of
20 process with respect to the Complaint and all matters arising under or relating to
21 this Consent Decree.

22 **XIV. FINAL JUDGMENT**

23 31. Upon approval and entry of this Consent Decree by the Court, this
24 Consent Decree shall constitute a final judgment of the Court as to the United
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1 States and Defendant. The Court finds that there is no just reason for delay and
2 therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

3 **ORDER**

4 IT IS SO ORDERED:

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6 _____
7 United States District Judge

8 Dated: _____
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1 FOR PLAINTIFF UNITED STATES OF AMERICA:

2 KELLY A. JOHNSON
3 Acting Assistant Attorney General
4 Environment and Natural Resources
5 Division
6 Washington, D.C. 20530

7 Dated: _____

8 By: _____

9 W. BENJAMIN FISHEROW
10 Deputy Chief
11 Environmental Enforcement Section
12 Environment and Natural Resources
13 Division
14 U.S. Department of Justice

15 Dated: _____

16 ANN C. HURLEY
17 ROBERT D. MULLANEY
18 Trial Attorneys
19 Environmental Enforcement Section
20 U.S. Department of Justice
21 301 Howard Street, Suite 1050
22 San Francisco, California 94105
23 Telephone: (415) 744-6491

1 FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

2
3 Dated: _____

4 GRANTA Y. NAKAYAMA
5 Assistant Administrator
6 Office of Enforcement and Compliance
7 Assurance
8 U.S. Environmental Protection Agency
9 1200 Pennsylvania Avenue
10 Mail Code 2201A
11 Washington, D.C. 20460
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Dated: _____

WAYNE NASTRI
Regional Administrator
U.S. Environmental Protection
Agency, Region 9
San Francisco, CA

OF COUNSEL:

Ann Lyons
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

1 FOR PLAINTIFF SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT:

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3 Dated: _____

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CAROL ENGELHARDT
Senior Deputy District Prosecutor

1 FOR DEFENDANT ATLAS ROOFING CORPORATION:
2

3 Dated: October 31, 2005

4 HARRY SIMMONS
5 Vice President - Finance
6
7

8 Agent for Service of Process:

9 FREDERICK J. UFKES

10 ERIC J. KOHM

11 Kirkpatrick Lockhart Nicholson Graham LLP

12 10100 Santa Monica Boulevard, Seventh Floor

13 Los Angeles, California 90067

14 Telephone: (310) 552-5000

15 Facsimile: (310) 552-5001
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